

**ATTACHMENT 7**

**BEFORE THE  
MARYLAND PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF**

**Complaint of CloseCall America, Inc.**

)  
)  
)  
)  
)  
)

**Case No.**

**VERIZON MARYLAND INC.'s ANSWER  
TO THE COMPLAINT OF CLOSECALL AMERICA, INC.**

In response to the Commission's May 7, 2002 Order, Verizon Maryland Inc. ("Verizon") files the following answer to the Complaint of CloseCall America, Inc. ("CloseCall").

**I. INTRODUCTION**

CloseCall's complaint asks this Commission to engage in unnecessary and counter-productive regulation of highly competitive markets. CloseCall's requests are anticompetitive -- because they would disrupt the development of thriving private markets -- and, in any event, seek relief that is beyond the authority of this Commission. CloseCall's complaint should be dismissed.

*First*, CloseCall asks this Commission to force Verizon to resell its voicemail service to CLECs at regulated rates. But the voice messaging market is highly competitive, and both CLECs and consumers already have a variety of market options for obtaining voicemail functionality. In Baltimore County alone, Verizon's online Yellow Pages list 35 providers of voicemail services and equipment. Moreover, CLECs that seek to offer their own voicemail in conjunction with voice services already have a variety of market options. They can buy or lease their own facilities or partner with an existing voicemail provider. Moreover, contrary to CloseCall's contention, CLECs are free to purchase from Verizon's tariff the same facilities (the SMDI link) that Verizon uses to provide the "interrupted" (or stutter) dialtone feature that

CloseCall emphasizes in its complaint. Requiring resale of Verizon's voicemail service will undermine the vibrant competition in the voicemail market and discourage future investment and innovation.

Moreover, a decision requiring the resale of voicemail services is not only bad policy; it would also be beyond this Commission's authority under both federal and state law. As the FCC has squarely held, voicemail is an interstate information service. The FCC has determined that the interstate information services market should be deregulated, and this Commission has no authority to act in conflict with that conclusion, any more than it could ignore FCC decisions on the proper regulation (or deregulation) of Internet access service. Even under Maryland law, this Commission has no authority to require the resale of voicemail.

*Second*, CloseCall has also asked this Commission to force Verizon to make "loop-sharing DSL available to . . . competitors on a wholesale basis." CloseCall Complaint at 12. There is no reason for the Commission to wade into this issue. Consistent with governing law, Verizon already permits resale of its retail DSL service in instances where the CLEC is reselling voice service on that line. Because CloseCall's only existing interconnection agreement with Verizon in Maryland is a resale agreement, there is no real issue here between these parties.

Consistent with FCC rulings, Verizon does not provide or resell DSL where a CLEC provides service using the UNE Platform or an unbundled loop. But even if that policy were relevant to this case -- which it is not -- Verizon's position has been reviewed by the FCC and is wholly consistent with a competitive marketplace. CLECs can either provide DSL themselves or engage in line-splitting with another CLEC that offers DSL. The FCC has found that the availability of such line-splitting undermines any claim of anticompetitive discrimination in such

circumstances.<sup>1</sup> In any event, as with voicemail, this Commission is not authorized to regulate the resale of DSL service to CLECs. State law does not provide the Commission with authority to regulate federally tariffed interstate services such as DSL. CloseCall's complaint thus asks for relief that this Commission cannot lawfully grant.<sup>2</sup>

## **II. THIS COMMISSION SHOULD NOT ORDER VERIZON TO MAKE ITS VOICE MESSAGING SERVICE AVAILABLE TO CLECS ON A WHOLESALE BASIS**

### **A. The Market for Voice Messaging Services is Highly Competitive**

CloseCall's request for a regulatory mandate that Verizon resell voicemail fails to present a problem that even arguably requires Commission intervention. On the contrary, the FCC's long-standing policy of deregulation of interstate information services such as voicemail has resulted in a thriving private market.

Numerous providers of voicemail systems and related products compete with Verizon's voicemail service. In Baltimore County alone, customers have a choice of at least 35 competitive providers of voice messaging services and facilities, all easily located through

---

<sup>1</sup> The D.C. Circuit very recently vacated and remanded the FCC's rules requiring ILECs to offer line sharing, after finding that the FCC had not shown that they are consistent with the Telecommunications Act of 1996. See United States Telecom Ass'n v. FCC, Nos. 00-1012, et al., slip op. (D.C. Cir. May 24, 2002). Although the court's mandate has not yet issued, this decision casts very serious doubt on whether line sharing will continue to be required.

<sup>2</sup> CloseCall tries to compensate for the lack of legal merit in its arguments by making baseless allegations about Verizon's supposed attempts to impede competition. For example, CloseCall alleges that Verizon "intentionally misapplied" this Commission's first UNE rate order by manipulating fill factors. CloseCall Complaint at 2. In reality, Verizon was merely adapting its cost model to incorporate a hypothetical variable called "Distribution Utilization," which this Commission had required Verizon to use but which Verizon's cost model did not originally employ. See generally Bell Atlantic-Maryland's Reply to AT&T's and MCI's Motion for Rehearing, Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under § 252 of the Telecommunications Act of 1996, Case No. 8731, Phase II (Md. Pub. Serv. Comm'n filed Aug. 31, 1998). Moreover, the facts put the lie to CloseCall's suggestions about impeding competition. Of the approximately 4.3 million switched access lines currently in service in Maryland, competing carriers in Maryland serve approximately 466,000 lines, or nearly 11 percent of the lines in this market. Declaration of William R. Roberts on Behalf of Verizon Maryland, Inc., Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. § 271(c), Case No. 8921, Attach. 101, ¶ 3 (Md. Pub. Serv. Comm'n filed Apr. 12, 2002).

Verizon's own Yellow Pages print and online directories.<sup>3</sup> Moreover, a majority of residential customers still use traditional answering machines instead of voicemail. In 1998, approximately two-thirds of U.S. households had answering machines.<sup>4</sup> Most answering machines that are available today offer features that mimic voicemail, such as digital call-in.<sup>5</sup> Numeric and alphanumeric pagers also offer individual consumers a messaging alternative to LEC-provided voicemail: as early as 1997, there were 49 million traditional pagers and 200,000 more advanced narrowband PCS pagers in service.<sup>6</sup> Many home computers have voice messaging capabilities that are comparable to Verizon's voicemail products.<sup>7</sup>

Moreover, many small businesses still use answering services instead of voice mail because of the benefits of having a human voice, instead of a recording, answer the phone.<sup>8</sup> Large businesses tend to use PBX-based voice mail, instead of LEC-provided Centrex voice mail, for their voice messaging needs. At the end of 1996, there were 300,000 PBXs in place in the U.S., and over 80 percent of all PBX extensions were in companies with over 100 lines.<sup>9</sup> In 1996, 54 percent of all businesses had installed voice mail systems on their PBXs, and another

---

<sup>3</sup> See SuperPages.com, Categories related to "voicemail," available at <http://yp108.superpages.com/listings.phtml?C=voicemail&N=&T=baltimore&S=MD&R=N&search=Find+It&SRC=BEFREE&STYPE=S&PG=L&rtd=yp102.superpages.com-090435>, last visited May 28, 2002 (linking to listings for 36 providers of voicemail and answering equipment, systems, and services in Baltimore, MD, only one of whom is Verizon).

<sup>4</sup> Answering Machines: A Question, The News and Observer, Feb. 20, 1997; MultiMedia Telecommunications Association and Telecommunications Industry Association, 1998 MultiMedia Telecommunications Market Review and Forecast ("MMTA") 113 (1998).

<sup>5</sup> Answering Machines Get the Message: Digital Is Here to Stay, Christian Science Monitor, Jan. 28, 1998, at 15.

<sup>6</sup> MMTA 147.

<sup>7</sup> See, e.g., SOHO Phone Roundup, Teleconnect, July 1997, at 86 (describing mini-PBX systems available for small or home offices, made by such companies as Lucent, Nortel, and Samsung, that offer several voice features, including voicemail, some as stand alone boxes and some through installation on a computer).

<sup>8</sup> K. Culbertson, Some Firms Say No to Voice Mail, Indianapolis Business Journal, Dec. 8, 1997, at 10A.

<sup>9</sup> MultiMedia Telecommunications Association and Telecommunications Industry Association, 1997 MultiMedia Telecommunications Market Review and Forecast 53 (1997).

20 percent planned to do so.<sup>10</sup> See also Decision No. 98-10-020, Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service, Nos. R.95-04-043 and No. I.95-04-044, 1998 Cal. PUC LEXIS 874, \*9 (Cal. Pub. Utils. Comm'n Oct. 8, 1998) (noting the analysis of Professor Jerry Hausman of the Massachusetts Institute of Technology which demonstrated that if Pacific Bell attempted to increase the price of its voicemail service by restricting its supply, competing vendors of both answering machines and voicemail service could easily absorb new customers).

B. CLECs Have Many Alternatives for Providing Voicemail

Because voicemail is so competitive, if a CLEC wishes to offer voicemail to its voice consumers, it has many options. For example, it can partner with one of the many existing voicemail providers to offer a package of voicemail and local telephone service. It can also lease the facilities necessary to provide the service. These facilities include the Simplified Message Desk Interface ("SMDI") link that permits the "interrupted" (or stutter) dialtone message notification referred to by CloseCall in its complaint. The SMDI link can be purchased under Verizon's intrastate tariff at Commission-approved rates. These facts demonstrate that the market provides ample solutions to the supposed problem that CloseCall identifies, and that regulatory intervention would be unnecessary and counterproductive.

In light of the highly competitive nature of the voicemail market, it is no surprise that the FCC has explicitly stated that the pro-competitive Federal Telecommunications Act does not require the resale of voicemail. See Memorandum Opinion and Order, Application of BellSouth Corporation et al. for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd

---

<sup>10</sup> Percent of Add-Ons Enterprise Users Give Their PBX Systems, Computer Industry Forecasts, Jan. 15, 1997; Power to the PBX, Communications Week, Sept. 16, 1996, at 35.

20599, 20780, ¶ 314 (1998). Many state commissions have similarly determined that, under federal and/or state law, such a requirement is inappropriate.<sup>11</sup>

C. CloseCall's Accusations Regarding Verizon's Termination of Departing Customers' Voicemail Service are Baseless

In its complaint, CloseCall claims that Verizon's process for transferring customers to CLECs interferes with those companies' opportunity to compete. CloseCall Complaint at 4. To support this allegation, CloseCall offers nothing more than unsupported anecdotes. In fact, Verizon takes significant steps to ensure that such transitions are effectuated rapidly and with as little disruption to the customer as possible.

When a Verizon customer signs on with a CLEC, Verizon takes numerous steps to ensure that service is switched over promptly and with minimal disruption. Verizon's policy when transferring customers over to CLECs is to disconnect both the voice messaging mailbox and the

---

<sup>11</sup> Decision No. 98-10-020, Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service, Nos. R.95-04-043 and No. I.95-04-044, 1998 Cal. PUC LEXIS 874, \*44 (Cal. Pub. Utils. Comm'n Oct. 8, 1998) ("A competitive telecommunications market does not require that CLCs have the opportunity to offer voice mail services under their own name in a fashion identical to the ways in which Pacific and GTEC offer such service to their own customers."); Decision T.E. 00-54, Sprint Communications Company L.P., 2000 WL 33146677 (Mass. Dep't of Telecomm. and Energ. Dec. 11, 2000) ("Verizon's refusal to offer vertical features [including voicemail] on a stand-alone basis to Sprint at the wholesale discount does not violate the Act or the FCC's Local Competition rules."); Order, AT&T Communications of the Midwest, Inc., 1997 WL 1055198, \*7 (Neb. Pub. Serv. Comm'n Apr. 14, 1997) ("We agree with GTE that the features of voice mail are not required to be offered for resale. Pursuant to the Act, resale services are those offered at retail to end users.") (citation omitted); Opinion and Order, AT&T Communications of Ohio, 1997 Ohio PUC LEXIS 324, § 26.7 (Ohio Pub. Utils. Comm'n May 1, 1997) ("AT&T proposes language which requires GTE to provide voice mail functionalities [as a resale service]. GTE states that neither the 1996 Act, nor the Commission's Arbitration Award, obligates GTE to provide voice mail services. GTE points out that AT&T and GTE have agreed on language . . . which requires GTE to provide unbundled voice mail features and functions. The Commission agrees with GTE that AT&T's proposal is not reasonable and, therefore, AT&T's proposed language shall not be included in the executed contract to be submitted to the Commission for approval.").

associated call-forwarding arrangement.<sup>12</sup> All Verizon technical personnel are extensively and repeatedly trained to observe this policy, which should lead to a smooth transition between providers.

Verizon does not treat such customers “callous[ly],” nor does it have any policy designed to make this transition more difficult. CloseCall Complaint at 4. In fact, contrary to the implication in CloseCall’s complaint, any troubles that have occurred here are due to isolated mistakes in failing to disconnect the call-forwarding feature. As noted, Verizon provides repeated training to minimize just those mistakes. If there is a significant problem with these processes that is harming CLECs and their customers, no customer or CLEC (CloseCall included) has made any mention of it to Verizon.

Indeed, customers transferring service from Verizon to CLECs likely understand that the disconnection of their Verizon local service necessarily involves the termination of their Verizon-provided voicemail, which includes the loss of any saved messages, previously-programmed greetings, and reminders. These circumstances are certainly no different from what customers experiences when they disconnect their CLEC telephone service and voicemail in favor of Verizon or another CLEC.

D. Voice Messaging Service Is an Interstate Information Service That This Commission Has No Authority To Regulate

In any event, this Commission is not a proper forum to seek an obligation to resell voicemail. For thirty years, the FCC has consistently and unambiguously held that the “enhanced” or “information” service market -- which includes voicemail -- should be left to develop free from regulation. See People of California v. FCC, 39 F.3d 919, 923 (9th Cir. 1994)

---

<sup>12</sup> Call-forwarding is a Centrex function which automatically transfers a caller from the voicemail customer’s telephone line to their voice messaging mailbox after a predetermined number of rings.

(“From the inception of the enhanced services industry, the FCC has declined to regulate it in the interest of promoting competition among providers of enhanced services.”). The FCC has since reiterated its belief that “free and fair competition is the best way to” “maximize the public’s ability to obtain efficient, low-cost” enhanced services. E.g., Report and Order, Amendment of Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry), 104 F.C.C.2d 958, 1001, ¶ 77 (1986) (“Computer III”).

Because, as the FCC has squarely determined, the intrastate uses of voicemail cannot be separated from the preemptively deregulated interstate ones, see Memorandum Opinion and Order, Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, 7 FCC Rcd 1619, 1620, ¶¶ 8-16 (1992) (“Memory Call Order”), this Commission has no authority to undermine the FCC’s decision to deregulate voicemail. Indeed, the FCC has held as much. In its initial Computer III order, for example, the FCC explained that “to permit application of inconsistent regulatory requirements to the provision of interstate and intrastate enhanced service offerings would be impracticable and would effectively negate federal policies.” 104 F.C.C.2d at 1127-28, ¶ 348. The FCC reaffirmed this conclusion in its Computer III Reconsideration Order, noting that it had previously “decided . . . that preemption was warranted in light of the strong federal interests in efficiency and innovation that we found were achievable through competition in enhanced services offerings, but which were jeopardized by intrusive regulation.” Memorandum Opinion and Order on Reconsideration, Amendment of Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry), 2 FCC Rcd 3035, 3061, ¶ 181 (1987) (emphasis added). Although the Ninth Circuit on appeal held that the FCC had insufficiently justified its preemption of state regulation of purely intrastate enhanced services, see People of California v. FCC, 905 F.2d 1217, 1243-45 (9th Cir. 1990), no

one challenged, and Court did not address, the FCC's decision to preempt state regulation of interstate enhanced services such as voicemail.

In the specific context of voicemail, moreover, the FCC has expressly concluded that preemption of intrusive state regulation is warranted. In its Memory Call Order, the FCC preempted the Georgia Commission's attempt to regulate voicemail because that regulation improperly displaced the FCC's "comprehensive regulatory framework governing BOC participation in the enhanced services marketplace." 7 FCC Rcd at 1623, ¶ 20.

Finally, the FCC has expressly concluded that "[s]tates . . . may not impose common carrier tariff regulation on a carrier's provision of enhanced services."<sup>13</sup> That decision has never been challenged as to interstate enhanced services. A decision by this Commission requiring Verizon to resell voicemail is effectively the same as a tariffing requirement: the Commission would determine the price at which Verizon would be required to provide voicemail service in the wholesale market, as well as the other terms and conditions under which it may offer that service. Under FCC precedent, that is impermissible. See also May 16, 1991 Resolution of the Federal-State Joint Conference on Open Network Architecture, 1991 FCC Lexis 2821 (resolving that enhanced services should not be subject to state tariffing regulation); Memory Call Order, 7 FCC Rcd at 1619, ¶ 4.

In any event, Maryland law does not support the Commission's regulation of voicemail. The Commission is statutorily authorized to regulate "public service companies" and "utility business[es]." Md. Code (1957, 1995 Repl.Vol.) Art. 78, § 1. "Public utilities" are "business enterprise[s] that perform[] essential public service[s] and that [are] subject to governmental

---

<sup>13</sup> Memorandum Opinion and Order on Further Reconsideration, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 88 F.C.C.2d 512, 541, ¶ 83 n.34 (1981).

regulation.”<sup>14</sup> In Maryland, public utility services “are limited to those services that a utility company provides under the privileges granted to it by the state.” Chesapeake and Potomac Tel. Co. of Maryland v. Maryland/Delaware Cable Television Ass’n, Inc., 310 Md. 553, 562 (1987) (internal quotation marks omitted). A “public service” is generally defined as “one private in its ownership but having an appropriate franchise from the state to provide for a necessity or convenience of the general public incapable of being furnished through the ordinary channels of private competitive business and dependent for its exercise upon eminent domain or some agency of government.” Attorney General v. Haverhill Gaslight Co., 101 N.E. 1061, 1063 (Mass. 1913).

While long ago the Maryland legislature determined that telephone service was of necessity to the citizens of Maryland and hence in need of regulation, see 1910 Maryland Laws, ch. 180, § 13 (bringing telecommunications within the ambit of public utility regulation), at no point has the Legislature determined that all competitive services provided over telephone lines are “public service[s],” as would be required to exercise authority here. Indeed, if the law were otherwise, the Commission could regulate Lexis/Nexis, America Online, and any other information service that is provided over telephone lines. See also Chesapeake and Potomac Tel. Co. of Maryland v. Maryland/Delaware Cable Television Ass’n, Inc., 310 Md. 553 (1987) (holding that the Commission exceeded its authority in regulating rates charged by telephone companies for use of their utility poles by cable television companies).

---

<sup>14</sup> Black’s Law Dictionary at 1544 (7<sup>th</sup> ed. 1999). See also, e.g., Pulitzer Pub. Co. v. FCC, 94 F.2d 249, 251 (C.A.D.C. 1937) (“Generally speaking, the term ‘public utility’ comprehends any facility employed in rendering quasi public service such as waterworks, gas works, railroads, telephones, telegraphs, etc., the use and enjoyment of which facilities the public has a legal right to demand.”); Higgs v. City of Fort Pierce, 118 So.2d 582, 585 (Fla. 1960) (“To constitute a ‘public utility,’ devotion to public use must be of such character that product and service is available to public generally and indiscriminately, or there must be acceptance by utility of public franchises or calling to its aid the police power of the state.”); Robbins v. Rapid City, 23 N.W.2d 144, 153 (S.D. 1946) (“A waterworks ‘utility’ contemplates the equipment for handling and distributing water, but does not embrace the water itself, which is the commodity distributed by the utility.”).

In this regard, it is important to note that other state commissions have refrained from requiring the resale of voicemail precisely because it is a competitive service. See, e.g., Arbitration Order, AT&T of the Mountain States, Inc., 1998 WL 855420, \*31 (Utah Pub. Serv. Comm'n Apr. 28, 1998) (“[W]e conclude that our decision turns on whether or not inside wire maintenance and voice mail are deemed ‘essential facilities and services,’ as defined [by state statute]. We previously concluded and now affirm that they are not. Neither service rises to the level of being essential insofar as they can be reasonably duplicated, are not necessary for AT&T/MCI to provide public telecommunications services, and represent services for which economic alternatives exist in terms of quality, quantity and price.”).<sup>15</sup> This Commission should reach the same result here.<sup>16</sup>

---

<sup>15</sup> See also Decision No. 60043, GST Tucson Lightwave Inc., 1997 WL 153781, \*6 (Ariz. Corp. Comm'n Feb. 5, 1997) (“Voice mail and inside wire maintenance are not telecommunications services, and also are presently available on the open market. Neither voice mail nor inside wire maintenance is a type of service which the Act was designed to make available to CLECs. It is not necessary for U S WEST to offer voice mail or inside wire maintenance to GST for resale.”); Arbitration Decision, MCI's Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Central Telephone Company of Illinois, 96 AB-009, 1997 Ill. PUC LEXIS 61, \*40 (Ill. Commerce Comm'n Feb. 5, 1997) (“Voice Mail does not fall within the Act's definition of a telecommunications service. Voice Mail is predominantly a service that involves the recording of information that has been sent through the use of a telecommunications service. Thus, it does not have to be made available for resale at this time.”); Arbitration Order, AT&T Communications of Nevada, Inc., Docket No. 97-5014, ¶ 85 (Nev. Pub. Serv. Comm'n Aug. 28, 1997) (“Because voice mail services involve the storage and retrieval of information which is accessed ‘via telecommunications,’ the Commission finds that voice mail is an ‘information service’ and thus, Nevada Bell has no obligation under the Act to provide such service to AT&T for resale.”); Slip op., AT&T Communications of the Southern States, Inc., Docket No. P-140, Sub 51, Issue No. 23 (N.C. Utils. Comm'n July 3, 1997) (“[V]oice mail is not a telecommunications service under the Act . . . such service is thus not subject to resale.”); Commission Order Modifying Arbitrator's Decision and Arbitrator's Recommendations, and Approving Interconnection Agreement with Modifications, AT&T Communications of the Pacific Northwest, Inc., 1997 Wash. UTC LEXIS 49, ¶ 14 (Wash. Utils. & Transp. Comm'n July 11, 1997) (“Voice mail is an enhanced service, and not a telecommunications service. Although voice mail is often bundled with telecommunications services, it is not involved in the transmission of information. Insofar as voice mail is not part of the transmission of information by the public switched telephone network, it is not a ‘telecommunication service’ as defined in federal law.”).

<sup>16</sup> While CloseCall notes that some states have required the resale of voicemail service to CLECs, see CloseCall Complaint at 10, these decisions were based on incorrect interpretations of state law and are contrary to both federal law and policy. Indeed, the Rhode Island decision has been stayed by the state supreme court. See Order, Verizon New England, Inc. v. Rhode Island Public Utilities Commission et al., No. 02-161-M.P. (R.I. Apr. 17, 2002).

**III. THIS COMMISSION SHOULD NOT ORDER VERIZON TO MAKE ITS DIGITAL SUBSCRIBER LINE SERVICE AVAILABLE TO CLECS IN THE MANNER DEMANDED BY CLOSECALL.**

A. This Case Presents No DSL Issue

This case presents no occasion to address any aspects of Verizon's policy regarding the provision of DSL when a CLEC offers voice service on the same line. Currently, Verizon makes its federally tariffed retail DSL service available for resale on lines over which CLECs offer resold voice service. See Memorandum Opinion and Order, Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut, 16 FCC Rcd 14147, 14162, ¶ 33 (2001) ("Connecticut 271 Order"). Since CloseCall's only interconnection agreement with Verizon in Maryland involves resale, not UNEs, there is simply no issue here as to whether Verizon is "refus[ing] to provide DSL service on a wholesale basis." CloseCall Complaint at 6. CloseCall's complaint thus presents no actual dispute, and it should be dismissed as to DSL for this reason alone.

B. Verizon's Policy on DSL over UNE Lines is Lawful and Consistent with Competition

Even if this case did present a question about the provision of DSL on the same loop that a CLEC has leased to provide voice service, there is no basis to grant relief to CloseCall. Verizon is in compliance with all its legal obligations, and its policy does not hinder competition.

In contrast to its practice with resold voice lines, Verizon does not resell (or offer to its own customers) DSL over lines on which CLECs provide voice service using UNE-P or UNE loops. CLECs, however, are free to provide DSL themselves over those same lines or to engage in line-splitting with another CLEC that offers DSL service. Verizon permits such line-splitting in a manner consistent with the FCC's Orders. See Checklist Declaration on Behalf of Verizon

Maryland Inc., Inquiry Into Verizon Maryland Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c), Case No. 8921, ¶ 164 (Md. Pub. Serv. Comm'n filed Apr. 14, 2002).

Verizon's business decision not to provide DSL over UNE lines is wholly in accord with current law. Indeed, relying on the availability of line-splitting, the FCC has expressly rejected such a claim:

We reject AT&T's argument that we should deny this application on the basis of SWBT's decision to deny its xDSL service to customers who choose to obtain their voice service from a competitor that is using the UNE-P. Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop . . . . [A]s described above, the UNE-P carrier has the right to engage in line splitting on its loop. As a result, a UNE-P carrier can compete with SWBT's combined voice and data offering on the same loop by providing a customer with line splitting voice and data service over the UNE-P in the same manner. In sum, we do not find this conduct discriminatory.

Memorandum Opinion and Order, Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, 15 FCC Rcd 18354, 18518, ¶ 330 (2000) (emphasis added). The FCC reiterated this holding just days ago. See Memorandum Opinion and Order, Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 02-35, FCC 02-147, ¶ 157 & n.562 (FCC rel. May 15, 2002) ("[U]nder our rules, the incumbent LEC has no obligation to provide DSL service over the competitive LEC's leased facilities."). The FCC has likewise declined to conclude that Verizon must resell DSL service over such lines. See Connecticut 271 Order, 16 FCC Rcd at 14162, ¶ 33 (refusing to find that federal law required such resale).

C. This Commission Has No Authority to Regulate Verizon's Federally-Tariffed Digital Subscriber Line Services.

Even if this Commission were to disagree with the FCC's analysis of these issues -- and there is no reason to do so -- the Commission lacks authority to add to the requirements under which Verizon makes available or resells its federally-tariffed DSL services.

First, the FCC has made plain that DSL transport is an interstate special access service subject to the FCC's jurisdiction, and has directed incumbent LECs to offer any stand-alone DSL product pursuant to a federal tariff. See Memorandum Opinion and Order, GTE Telephone Operating Cos., GTOC Tariff No. 1, GTE Transmittal No. 1148, 13 FCC Rcd 22466 (1998).

As the D.C. Circuit has explained, "[t]he FCC has exclusive jurisdiction to regulate" such "interstate" services. Crockett Tel. Co. v. FCC, 963 F.2d 1564, 1566 (D.C. Cir. 1992). This Commission has no authority to add to the conditions specified in the federal tariff. A federal tariff comprehensively governs all the terms and conditions under which a carrier provides the service. See 47 U.S.C. § 203(a). As the Supreme Court explained in a recent case, "[t]he rights as defined by the tariff cannot be varied or enlarged." AT&T Co. v. Central Office Tel., Inc., 524 U.S. 214, 227 (1998) (emphasis added; internal quotation marks omitted). As the Supreme Court has also recently emphasized, the primacy of the federal tariff applies not only to rates, but also to terms and conditions of service. "Rates . . . do not exist in isolation. They have meaning only when one knows the services to which they are attached." Id. at 223.

The Commission would violate these principles if it were to accept CloseCall's contentions. By requiring that Verizon either provide or resell its service under certain

conditions where it does not currently do so, the Commission would be adding obligations to the federal tariff. As a matter of federal law, that is not permissible.<sup>17</sup>

It is not a valid response to this argument to claim, as CloseCall might, that it is only seeking regulation of intrastate DSL communications. As in the voicemail context, the relevant rule is that “‘where it [is] not possible to separate the interstate and intrastate components of the . . . FCC regulation’ involved, the Act sanctions federal regulation of the entire subject matter (which may include preemption of inconsistent state regulation) if necessary to fulfill a valid regulatory objective.” Illinois Bell Tel Co. v. FCC, 883 F.2d 104, 114-15 (D.C. Cir. 1989) (quoting Louisiana Pub. Serv. Comm’n v. FCC, 476 U.S. 355, 375 n.4 (1986)) (citation omitted; alterations in original); see also North Carolina Utils. Comm’n v. FCC, 552 F.2d 1036 (4th Cir. 1977); North Carolina Utils. Comm’n v. FCC, 537 F.2d 787 (4th Cir. 1976). As long ago as 1989, the FCC, relying on a recommendation from the Federal-State Joint Board, determined that it was not possible to determine whether particular transmissions over a special access line (of which DSL is one kind) are intrastate or interstate and thus to regulate those kinds of transactions separately. See Decision and Order, MTS and WATS Market Structure, Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board, 4 FCC Rcd 5660 (1989) (adopting Recommended Decision and Order by the Federal State Joint Board); Recommended Decision and Order, MTS and WATS Market Structure, Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board, 4 FCC Rcd 1352 (1989); 47 C.F.R.

---

<sup>17</sup> See Public Serv. Co. of New Hampshire v. Patch, 167 F.3d 29, 35 (1st Cir. 1998) (“[T]he Supreme Court has ruled that where the FERC has lawfully determined a rate, allocation, or other matter, a state commission cannot take action that contradicts that federal determination. And even without explicit federal approval of a rate, the Court has treated a rate reflected in a FERC tariff as setting a rate level binding on a state commission in regulating the costs of the purchasing utility.”) (citing Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354, 373-74 (1988); Nantahala Power & Light Co. v. Thornburg, 476 U.S. 953, 962-66 (1986)); see also Ivy Broad. Co. v. AT&T Co., 391 F.2d 486, 491 (2d Cir. 1968) (“The published tariff rate will not be uniform if the service for which a given rate is charged varies from state to state according to differing state requirements.”).

§ 36.154(a). Because it is not possible for the FCC to limit its regulation solely to interstate communications, the FCC has exclusive authority to regulate both intrastate and interstate transmissions provided under a federal tariff.

### **CONCLUSION**

For the foregoing reasons, the Commission should dismiss CloseCall's complaint.

Respectfully submitted,

Sean A. Lev,  
Of Counsel

---

David A. Hill  
Verizon Maryland, Inc.  
1 East Pratt Street  
Floor 8E  
Baltimore, MD 21202  
(410) 393-7725

## CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2002, a copy of the foregoing Answer of Verizon Maryland Inc. was served on the Public Service Commission of Maryland by hand and on Carville B. Collins, Esq. by overnight delivery.

---

David A. Hill